



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 16, 1996

Mr. Clement H. Osimetha  
Assistant City Attorney  
Office of the City Attorney  
City Hall  
Dallas, Texas 75201

OR96-1474

Dear Mr. Clement:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 100931.

The City of Dallas (the "city") received a request for the complete file of an aggravated robbery investigation. You assert that the requested information is excepted from disclosure pursuant to sections 552.101 and 552.108 of the Government Code.

Although the city received the request on May 20, 1996, the city did not request a decision from this office until July 6, 1996. Section 552.301 of the Government Code provides that:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the exceptions under [chapter 552] must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions. The governmental body must ask for the attorney general's decision and state the exceptions that apply *within a reasonable time but not later than the 10th calendar day after the date of receiving the written request.* [Emphasis added.]

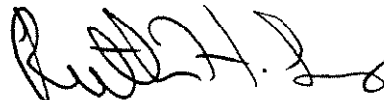
Chapter 552 thus imposes a duty on a governmental body seeking an open records decision to submit that request to this office within ten days after receipt of the request for information. Failure to abide by this provision results in the presumption that information is public. Gov't Code § 552.302.

The presumption that information is public when the ten day deadline is not met can only be overcome by a compelling demonstration that the information at issue should not be made public, such as when information is made confidential by other law. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by showing information was made confidential by other law or affects third party interests). As section 552.108 is a discretionary exception that can be waived, you have waived your section 552.108 argument by failure to timely submit your request to this office. *See* Open Records Decision No. 216 (1978) at 2 (552.108 is discretionary exception).

You have also asserted that the information at issue is excepted from disclosure under the informer's privilege aspect of section 552.101, because "some of the notations made by investigating officers on this case concern informers and statements that might tend to reveal the informers' identity." We are unable to determine which notations are at issue, as you have not specifically marked the documents. We note that, absent a showing that there is a compelling interest in withholding the records at issue, the records must be released. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 378, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). You have not shown that a compelling interest exists.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/ch

Ref.: ID# 100931

Enclosures: Submitted documents

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(w/o enclosure)